

REMARKS/ARGUMENTS

These remarks are responsive to the non-final Office Action dated September 3, 2008. Applicants respectfully request entry of this Amendment. Claim 65 has been amended. No new matter has been added. Claims 1, 4-6, 11, 32-34, 40-50, 53, 54 and 56-65 are pending in this application. Reconsideration and allowance of the instant application are respectfully requested.

Claim Rejections Under 35 U.S.C. §103(a)

Claims 1, 4, 11, 32-34, 40-50, 53, 56, 58, 60-62, and 65 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fink *et al.* (U.S. Patent No. 6,496,935) and Joyce (U.S. Patent No. 6,519,703). These rejections are respectfully traversed.

Independent claim 1 recites, a firewall configured to “forward the data packets of [a] second type to a virus scanning engine for testing.” The Office Action relies on the combination of Fink in view of Joyce to show all the features of claim 1. Specifically, the Office Action points to the buffer 24 releasing packets into complex firewall rule base 14 for processing. Office Action, page 5. Notably, Joyce discloses releasing packets for further processing by a firewall rule base *within the firewall*. Joyce, col. 3, l. 54-58; Fig. 1. Stated differently, Joyce discloses that the firewall, not a virus scanning engine, completing further rule base processing on the data packets. Thus, Joyce does not disclose a firewall configured to forward the data packets of a second type *to a virus scanning engine* for testing, as claim 1 recites. Instead, the data packets are kept within the firewall and processed according to other rule bases. As the Office Action concedes, Fink does not cure this deficiency. *See* Office Action, page 3. Accordingly, independent claim 1 is patentably distinct over Fink in view of Joyce.

Independent claims 49, 50 and 62 contain substantially similar features as those discussed with respect to independent claim 1. Thus, claims 49, 50, and 62 are patentably distinct over Fink in view of Joyce for substantially the same reasons discussed with respect to claim 1. Claims 4, 11, 32-34, 40-48, 53, 56, 58, 60-61, and 65 depend from claims 1, 49, 50, or 52 and are patentably distinct over Fink in view of Joyce for at least the reasons discussed with respect to their ultimate base claim, and for the additional features recited therein.

For example, claims 4 and 58 recite, “wherein the classifying comprises determining that data packets of the first type contain real time data.” The Office Action alleges that either Fink

or Joyce disclose this feature. Office Action, page 7 (citing l. 1-5 of the Abstract and col. 3, l. 32-39 of either Joyce or Fink). However, nowhere in the cited passage or the remainder either of these references does it teach or suggest this type of classification. Accordingly, claims 4 and 58 are allowable for this additional reason.

Claims 5, 57, 59 and 63-64 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fink and Joyce and further in view of Lee (U.S. Patent No. 7,047,561, “Lee”). These rejections are respectfully traversed.

As discussed the combination of Fink and Joyce do not disclose all the features of claims 1, 49, 50, and 62. Lee does not cure the deficiencies of Fink and Joyce as discussed above with respect to claim 1. Accordingly, claims 1, 49, 50, and 62 are patentably distinct over Fink in view of Joyce and in further view of Lee. Claims 5, 57, 59, and 63-64 depend from claims 1, 49, 50, and 62 and are patentably distinct for at least the reasons discussed with respect to their ultimate base claim, and for the additional features recited therein.

For example, claims 5, 57, and 59 relate to wherein classifying the data packets based on the contents of the data packets includes determining whether at least one of the data packets includes content for a real-time audio or video data stream. Contrary to the Office Action’s assertions, none of the cited references, either separately or in combination, teaches or suggests such features. In the Office Action’s rejection of the aforementioned claims, the Office Action cites passages of Lee relating to data packets for multi-media. Office Action, page 12; Lee, Col. 1, l. 58-62; col. 5, l. 36-39. Even assuming, without conceding, that Lee describes data packets for multi-media, the cited references still lack a teaching or suggestion of *classifying* data packets by determining whether the data packets includes content for real-time audio or video data streams.

Further, the Office Action’s alleged motivation for making the asserted combination is that one of ordinary skill would want to have a firewall used in association with real-time Internet application. Not only does the Office Action’s alleged motivation not address why one would classify data packets by determining whether the data packets include content for real-time audio or video streams, the Office Action is merely applying impermissible hindsight

reconstruction to piece together the prior art references using Applicants' Specification as a blueprint. Accordingly, claims 5, 57, and 59 are allowable for this additional reason.

Claims 6 and 54 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fink and Joyce and further in view of Lyle (U.S. Patent No. 6,886,102, "Lyle"). These rejections are respectfully traversed.

As discussed above Fink and Joyce do not disclose all the features of claims 1 and 50. Lyle does not cure the deficiencies of Fink and Joyce. Thus, claims 1 and 50 are patentably distinct over Fink in view of Joyce in further view of Lyle. Claims 6 and 54 depend from claims 1 and 50, respectively, and are patentably distinct over Fink in view of Joyce and Lyle for at least the reasons as their ultimate base claim, and for the additional reasons recited therein.

CONCLUSION

Based on the foregoing, Applicants respectfully submit that the application is in condition for allowance and a Notice to that effect is earnestly solicited. Should the Examiner believe that anything further is desirable in order to place the application in even better form for allowance, the Examiner is respectfully urged to contact Applicants' undersigned representative at the below-listed number.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Dated: December 3, 2008
1100 13th St. N.W.
Washington, D.C. 20005-4051
Tel: (202) 824-3000

By: /Chunhsi Andy Mu/
Chunhsi Andy Mu, Reg. No. 58,216